



STATE BOARD OF INSURANCE

1110 SAN JACINTO

AUSTIN, TEXAS 78701-1998

(512) 463-6169

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September 13, 1990

RD 21

The Honorable Jim Mattox
Attorney General
State of Texas
Supreme Court Building
Austin, Texas 78711-2548

RE: Open Records Request

Dear General Mattox:

Please find enclosed a letter from Bruce Hight of the Austin American Statesman requesting documents from the State Board of Insurance pursuant to the Open Records Act, article 6252-17a, Texas Revised Civil Statutes.

Mr. Hight requests the dates of all examinations performed over the past ten years on each of the companies in the Employers of Texas Insurance Group, including Employers Casualty Co.; Employers Casualty Corp.; Employers Indemnity Co.; Employers National Insurance Co.; Employers National Insurance Corp.; Texas Compensation; and Texas Employers Insurance Association. We have forwarded to Mr. Hight eight pages of documents referred to as "history cards" which contain the dates of all examinations performed on the above-named companies covering more than the past ten years and the names of the examiner or examiners who conducted the examinations.

Mr. Hight also requests all information pertaining to the results of the examinations of the above-referenced companies, the recommendation of the examiners, and any quarterly, monthly, or other "less-than-annual reports" submitted by the above-named companies since January of 1987. Mr. Hight also requests any reports prepared by the State Board of Insurance staff on any of the above-named companies since January of 1987.

It is the position of the State Board of Insurance that, with the exception of the history cards described above, the information Mr. Hight has requested is exempt from public disclosure by law.

Section 7(a) of the Open Records Act states that if a state agency receives a request for information which it considers to be exempt from disclosure under Section 3 of the Open Records Act that the

**ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY**

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agency must request a decision from the Attorney General to determine whether the information is exempt from disclosure if "there has been no previous determination that it falls within one of the exceptions." It is the position of the State Board of Insurance that there have been numerous previous determinations of your office that information related to the examination of insurance companies is confidential and exempt from public disclosure, in particular, ORD No. 158 (1977), discussed below, and more recently, OR89-005, among others. Since these previous decisions of the Attorney General are on point, it is the position of the State Board of Insurance that this agency is not legally required to request another Attorney General's determination and that the Attorney General is not obligated to issue a redundant decision. Nonetheless, we are forwarding this request for a determination on Mr. Hight's request to your office.

The Open Records Act provides in §3(a) that all information collected, assembled, or maintained by or for governmental bodies is public information and available to the public with certain exceptions. §3(a)(1) exempts from public disclosure information deemed confidential by law, either Constitutional, statutory, or by judicial decision. §3(a)(4) exempts from public disclosure information which, if released, would give advantage to competitors or bidders and §3(a)(10) exempts from public disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. §3(a)(12) exempts from public disclosure information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. The State Board of Insurance asserts that the documents Mr. Hight requests may be confidential under any one of these four exceptions contained within §3(a) of the Open Records Act. However, in light of past Open Records Decisions, the strongest grounds for confidentiality of examinations-related documents are those contained in §§3(a)(1) and 3(a)(12) of the Open Records Act and, therefore, we will only discuss those two sections in this letter.

§3(a)(12) of the Open Records Act exempts from public disclosure, "information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, and/or securities, as that term is defined in the Texas Securities Act." Open Records Decision No. 158 (1977) determined unequivocally that insurance companies are "financial institutions" as the term is used in §3(a)(12) and that examination reports prepared by or on behalf of an agency responsible for the regulation or supervision of insurance companies are exempt from public disclosure. It is the position of this agency that each of

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the items Mr. Hight requests, other than the history cards, is exempt from public disclosure under §3(a)(12) because each item is compiled either by or for this agency as a part of the process of this agency's examination of insurance companies. Mr. Hight asks for the results of the examinations conducted on the named companies, and the recommendations and actions taken as a consequence of the examinations. Such documents would fall directly within the exception from public disclosure of §3(a)(12) as "information contained in or related to examination, operating, or condition reports..." Mr. Hight also requests "any quarterly, monthly, or other less-than-annual reports..." Annual reports of insurance companies are public records and available to Mr. Hight. The Texas Insurance Code does not specifically require insurance companies to file "less-than-annual reports" referred to as "interim financial reports." These reports, however, are required by the State Board of Insurance under the general examination powers granted to this agency under TEX. INS. CODE arts. 1.15 through 1.19 and art. 1.24, among others. The purpose of such reports is to allow the State Board of Insurance to monitor the financial condition of certain companies on a regular and systematic basis and to allow our examiners to identify and correct problem areas before they develop rather than waiting for a more comprehensive examination or after the filing of an annual statement.

The same legal and policy reasons exist to protect the confidentiality of interim financial statements and this agency's analysis of them as exist for the confidentiality of the formal examinations of companies. The interim financial statements and related reports clearly constitute "information contained in or related to examination, operating, or condition reported prepared by, on behalf of, or for the use of" this agency jurisdictionally responsible for the regulation and supervision of insurance companies.

Finally, Mr. Hight requests any reports prepared by the staff of the State Board of Insurance in connection with the "Early Warning System" since 1987. The "Early Warning System" generally is this agency's procedure for implementation of the directive in TEX. INS. CODE art. 1.32 to identify as early as possible companies which may be in a hazardous financial condition and to take remedial action. Art. 1.32 §3 authorizes the State Board of Insurance to promulgate rules, regulations, and criteria for such early warning. Effective December 27, 1989, the State Board of Insurance adopted Chapter 8 of Title 28 of the Texas Administrative Code (TAC), entitled "Early Warning System For Insurers In Hazardous Condition." The purpose of the rules, as stated in 28 TAC §8.1 is to enumerate conditions which may indicate that an insurer is in hazardous condition and which may be a basis for the Commissioner of Insurance to initiate an action against an insurer under the Insurance Code. One or more

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"hazardous conditions" may exist in an insurance company which is in satisfactory condition and, therefore, in evaluating any of the conditions, all circumstances concerning the insurer's operation must be evaluated in making an ultimate conclusion that an insurer is in hazardous condition. (28 TAC §8.1)

There are 30 "hazardous condition" indices enumerated in 28 TAC §8.3. Some of these indices are general, common sense matters such as the failure of an insurer to file required financial statements or if an insurer files false or misleading statements. Other of the indices are more technical such as the ratio of surplus to net premium written and the methodology used in calculating reserves. State Board of Insurance examiners have employed various measures enumerated in the early warning rules long before they were compiled and formally adopted. The early warning measures are very similar to the IRIS ratio material (Insurance Regulatory System financial monitoring data) compiled by the National Association of Insurance Commissioners (NAIC) and shared with the state insurance regulatory agencies. OR-196 (1988) held the IRIS material to be exempt from public disclosure under §3(a)(12) as an integral part of the process of examination of insurance companies under TEX. INS. CODE arts. 1.15-1.19. The Board explicitly recognized that the early warning measures were not necessarily new standards when it adopted the hazardous condition guidelines by stating in 28 TAC §8.1, "The evaluation of the information relating to these conditions is part of the examination process." Thus, any report prepared in regard to early warning analysis of the condition of an insurance company is simply one type of examination report and an integral part of the examination process and, consequently, exempt from public disclosure under §3(a)(12) and 3(a)(1) of the Open Records Act.

The Open Records Act, §3(a)(1) exempts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." TEX. INS. CODE art. 1.19 makes information gained during the course of an examination of an insurance company confidential. Other provisions of the Texas Insurance Code extend the general confidentiality provision of art. 1.19, such as art. 21.28-A §3A and art. 21.49-1 §10. Although §3(a)(12) of the Open Records Act makes the examinations process confidential, §3(a)(1) is also applicable in this case since the information Mr. Hight seeks is also deemed confidential by statute.

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In conclusion, the State Board of Insurance requests an opinion from your office reaffirming the exemptions under the Open Records Act as outlined above. If you have questions regarding this matter please contact Evan V. Nave, staff attorney, at (512) 463-3046.

Sincerely,

A handwritten signature in black ink, appearing to read "A. W. Pogue". The signature is fluid and cursive, with a large loop at the end.

A. W. Pogue
Commissioner of Insurance

AWP:EVN:fj

cc Lee Jones, Information Services
Scott Nance, Financial Analysis Unit
Catherine Lockett, Examination Dept.